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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re J.B. et al., Persons Coming
Under the Juvenile Court Law.

B302211
(Los Angeles County
Super. Ct. No.
18CCJP05381A–D)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.B. et al.,

Defendants.

APPEAL from an order of the Superior Court of Los
Angeles County, Brett Bianco, Judge. Affirmed.

Marissa Coffey, under appointment by the Court of Appeal,
for Objectors.

Office of the County Counsel, Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, Melania Vartanian, Deputy County Counsel, for Plaintiff and Respondent.

I. INTRODUCTION

Following an alcohol-related incident of domestic violence by J.B., Sr. (father), against A.P. (mother), the juvenile court assumed jurisdiction over their four children, removed them from father, and ordered the family to complete certain court-ordered services, including domestic violence and alcohol programs. At the second six-month review hearing, the court allowed father to return to the home under the continued supervision of the Department of Children and Family Services (Department).

The children appeal from the juvenile court's order, arguing that the court abused its discretion by allowing father's return before the parents had complied with all court-ordered services. We affirm.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. *Detention*

Mother and father had been living together for 15 years; had been married for eight years; and had four children together, sons J.B. (who was 11), K.B. (who was ten), daughter L.B. (who was nine), and one-year-old Ju.B.

On August 1, 2018, the police advised the Department that, on July 31, 2018, at approximately 11:45 p.m., mother walked into the Wilshire Division station of the Los Angeles Police Department and filed a complaint against father. Mother reported that father had struck her with a closed fist multiple times and had attempted to strangle her. She sustained multiple injuries and was treated at the scene by paramedics, but refused further medical assistance. Father was arrested for felony intimate partner violence with injury and mother agreed to the issuance of an emergency protective order.

On August 6, 2018, a social worker visited the family. During her interview of mother, the social worker noticed that mother had significant bruising above and below both eyes and large bruises on her right arm which she stated were caused by father. Mother reported that father had hit her and that J.B. and K.B. were home during the incident. She stated that her two younger children were not at the home as they were sleeping over at maternal grandmother's home.

Mother was unsure whether she would stay in a relationship with father, but claimed the incident was the only time she had experienced domestic violence with father. She also claimed the children were not hurt during the incident and denied any physical abuse of the children in the home.

The social worker also interviewed J.B. who told her that on the evening of the incident, father had been drinking outside with friends and that, when he came inside the apartment, he began to argue with mother. J.B. recalled grabbing father and pulling him into the living room. Mother then ran out of the apartment. Afterwards, father "just laid on the couch [and the] police came and . . . took him [away]." J.B. denied that there had

been other domestic violence between his parents, but admitted that “father scared him” and that he was “afraid it [would] happen again.” According to J.B., father drank more alcohol than mother, who only drank “sometimes.”

During the social worker’s interview of K.B., he corroborated J.B.’s description of the incident between father and mother. K.B. felt sad that his mother had bruises on her face and arms, and he was “a little afraid” of his father because of what he had done to mother. But he denied that there had been any prior domestic violence between his parents. K.B. explained that father drank “a lot” and mother drank “sometimes.”

After several unsuccessful attempts to meet with father, the social worker interviewed him at the family apartment. Father admitted that he was drunk on the evening of the incident and that he had argued with mother about “infidelity issues.” Father could not, however, provide details about the incident because he blacked out during the argument and did not remember assaulting mother, although he recalled some pushing between the two. He did not recall punching, choking, or hurting mother in any other way. He was also unaware of mother’s injuries because he had not seen her since his arrest. He believed that his two oldest boys were home during the incident.

Father reported that, after spending time at his sister’s house, he had returned home and there had been no new incidents. According to father, he had not drank since the incident; but he was not enrolled in any programs for alcohol or domestic violence, and did not intend to enroll in any, unless ordered to do so by the juvenile court. Father denied any history of domestic violence between him and mother, but he agreed to leave the home because he did not want to risk his children being

removed. He also denied any physical, emotional, or sexual abuse of the children. Father did not foresee any further domestic violence issues with mother and confirmed that he would “comply with everything that [was] asked of him.”

On August 23, 2018, the Department filed a three-count Welfare and Institutions Code section 300¹ petition as to all four children.² At the August 24, 2018, detention hearing, the

¹ All further statutory references are to the Welfare and Institutions Code.

² In paragraphs a-1 and b-1 of the petition, the Department alleged: “On or about [July 31, 2018], the children[’s mother and father] engaged in a violent physical altercation. [F]ather struck [] mother’s face with [his] fist causing [] mother to fall to the floor [M]other and father pushed one another. [J.B.] intervened during the domestic violence incident. [M]other sustained bruises on [her] eyes and arm. On [August 1, 2018], [] father was arrested and charged with [i]nflicting [c]orporal [i]njury to [s]pouse. [M]other failed to protect the children by continuing to allow [] father to reside in the home of the children and to have unlimited access to the children. Such violent conduct on the part of [] father towards [] mother and [] mother’s failure to protect the children endanger[ed] the children’s physical health and safety and place[d them] at risk of serious physical harm, damage, danger and failure to protect.”

In paragraph b-2, the Department alleged: “The children[’s] father . . . has a history of alcohol abuse and is a current abuser of alcohol, which renders [him] unable to provide regular care and supervision of the children. On [July 31, 2018,] and on prior occasions, [] father was intoxicated from alcohol in the children’s home. The child Ju[B.] is of such young age requiring constant care and supervision and [] father’s alcohol abuse interferes with [his] ability to provide regular care and

juvenile court found that the Department had made a prima facie case for detaining the children and a showing that they were persons described in section 300. The court ordered that the children be removed from father pending disposition and released to mother under the supervision of the Department. Father was granted monitored visitation three times a week, and the court set an adjudication hearing for October 4, 2018.

B. *Jurisdiction/Disposition*

On September 17, 2018, a Department investigator and a social worker reported that they interviewed mother who explained that during the three months prior to the incident, father had been drinking more than usual. Mother believed that alcohol contributed to the physical violence.

The Department investigator interviewed father the next day, who again claimed he had no recollection of the incident. Concerning his alcohol use, father admitted that it was “a factor” in the incident and that it would not have escalated to physical violence if he had been sober. When the investigator reminded father of his prior arrests, which were also alcohol-related, father responded that his “DUI . . . was a long time ago.” The

appropriate supervision of the child. [F]ather has a criminal conviction for [d]riving [u]nder the [i]nfluence of [a]lcohol [M]other . . . knew of [] father’s alcohol abuse and failed to protect the children by allowing [him] to reside in the home of the children and to have unlimited access to the children. [F]ather’s alcohol abuse and [] mother’s failure to protect the children endanger[ed] the children’s physical health and safety and place[d] the child[ren] at risk of serious physical harm, damage, danger and failure to protect.”

investigator advised father that his issues with alcohol appeared unresolved and may have worsened, given that he had blacked out during the incident. When the investigator asked father if he would agree to a toxicology screening, father refused to test absent a court order.

At the October 4, 2018, jurisdiction hearing, the juvenile court sustained the petition on all three counts and found that the children were persons described in section 300. At the request of the children's counsel, the court continued disposition to November 5, 2018. The court ordered that the children were to remain in mother's custody until further order and that father was not to reside in the home or visit the children, except as allowed under the visitation order.

In a November 5, 2018, last minute information, the Department reported that father submitted to a toxicology screening on October 26, 2018, which was positive for alcohol. Maternal grandmother advised that father visited the family home on Sundays, but that he did not consume alcohol or appear under the influence of alcohol.

At the November 5, 2018, disposition hearing, the juvenile court found that, for at least some period of time after the children were detained from father, mother had allowed him to reside in the home. The court noted, based on its finding, that there were grounds to remove the children from mother as requested by the Department, but determined that it would give her "one last opportunity to keep the children in her care." The court therefore ordered the children released to mother, but on the condition that father not reside in the home or visit the home "outside of any Department-approved monitored visitation." The court emphasized that father's visits were not to occur in the

family home and authorized the Department to remove the children from mother if she violated the conditions on their release to her. The court ordered mother to participate in an alcohol program, ordered father to complete a 12-step program, and advised that, if father tested positive for alcohol or missed a test, he would “be ordered into a full program” with random drug testing. It also ordered both parents to complete domestic violence programs, among others. The court set a six-month review hearing for May 6, 2019.

C. *May 6, 2019, Status Review Hearing*

In an April 16, 2019, status review report, the social worker who met with mother on December 10, 2018, reported that mother had not begun any of her court-ordered services and that she did not plan on beginning any until January 2019. The social worker advised that, as of February 19, 2019, mother had begun attending Al-Anon meetings. As of March 20, 2019, mother had been attending meetings weekly. The social worker further advised that mother began her domestic violence classes in January 2019 and was continuously enrolled through March 8, 2019.

The social worker interviewed father on February 21, 2019, and asked when he last drank alcohol. Father responded that he drank about “8[to]15 days ago.” Father’s preferred drink was beer, and he consumed between four and six beers on those occasions when he drank. He also admitted that, prior to the involvement of the Department, he would drink “a lot.”

As for testing, the social worker noted that for the period January 7, 2019 to March 20, 2019, father tested 11 times, with

six negative results, three positive results, and two “[n]o [s]how[s].” Father denied drinking and attributed his positive tests to a drug he had been taking for acid reflux. The social worker contacted the toxicology laboratory and was informed that, based on the presence of glucose in father’s urine samples, he may be diabetic. According to the laboratory, because glucose converts to alcohol, it could be the reason for father’s positive tests. Although father denied being diabetic, the social worker urged him to see a doctor. On March 20, 2019, father reported that he last drank four days earlier, when he consumed two beers. On April 4, 2019, father claimed that his doctor had diagnosed him as diabetic and prescribed medication.

According to father, he had attended approximately eight AA meetings in February 2019. At the meetings, they discussed “the 12 steps,” and father had purchased a book about them. Father advised on March 20, 2019, that he had continued to attend AA meetings, but that work and other issues had prevented him from attending regularly since that time.

Father further advised the social worker that he had been attending domestic violence classes since September 2018 and that by February 21, 2019, he had attended 24 classes. And, approximately a month later, father confirmed that he continued to attend the classes on a weekly basis.

And, as of March 27, 2019, father had enrolled in a parenting class, but had attended only once. He had not, however, enrolled in individual counseling or conjoint counseling with either the children or mother.

The three older children reported that they liked visiting with father and that they felt safe during their visits. They also denied seeing father under the influence of or drinking alcohol.

At the May 6, 2019, review hearing, the Department recommended that the case remain open for another six months, and the children's counsel joined in that request. Father's counsel recommended unmonitored visitation, despite father's positive alcohol screenings, arguing that there was "a good chance" the positive tests were due to father's diabetes. The Department and the children's counsel disagreed with unmonitored visitations, citing father's missed and positive alcohol screenings and his admitted recent alcohol use.

The juvenile court found that the timing of father's admission of alcohol use and the record of his alcohol screenings were "a little too suspici[ous]" and therefore denied unmonitored visitation. But the court granted the Department discretion to liberalize father's visits. The court also ordered the parents to continue participating in all previously ordered programs and set a further six-month review hearing for November 4, 2019.

D. November 4, 2019, Status Review Hearing

In an October 21, 2019, status review report, the social worker reported that two different people had been monitoring father's visits with the children, which allowed father to see the children more frequently. According to the social worker, father had not been living in the home for over a year, which appeared to have had "a substantial impact on [the children's] emotional well-being." The children told the social worker that they missed their father and enjoyed their visits with him.

Mother informed the social worker that she had participated in Al-Anon, but had been unable to continue participation due to a recent promotion at work and changes in

her work schedule. She further reported that she had completed her domestic violence program, but had not yet received her certificate of completion. Mother and the older children had also participated in individual therapy and were ready to begin family sessions.

The social worker reported that father had completed parenting and domestic violence programs. The coordinator of the domestic violence program advised that father had “made great progress,” had a better understanding of the nature of domestic violence, and had gained insight into the issues that brought the family to the attention of the Department. Father had also recently enrolled in individual therapy.

Father continued weekly testing for drugs/alcohol during the reporting period and had continued to test positive for alcohol, but “with glucose present in [his] urine [samples].” Further, some of his negative test results were diluted, which was indicative of high water consumption prior to the test. Notwithstanding father’s diabetes diagnosis, father admitted that he had continued to drink periodically throughout the reporting period.

The social worker opined that, based on “the progress the family ha[d] made overall,” father should be allowed “to return to the home” and jurisdiction over the children should be terminated.

In a November 1, 2019, last minute information report, the social worker advised that mother had provided a certificate of completion for her domestic violence program. The social worker further advised that, during October 2019, father had tested negative for drugs/alcohol on four occasions.

At the November 4, 2019, review hearing, the Department submitted on its recommendation that father be allowed to return to the home. The children's counsel called father, who testified as follows: He confirmed that he had completed his domestic violence and parenting programs about a month prior. He was also enrolled in individual counseling and had attended four sessions. In that counseling, he discussed his drinking problem. According to father, due to his diabetes, he had stopped drinking about a month and a half prior to the hearing. Father had been attending AA meetings, but because "they just talked a lot," he bought a book on the 12-step program and had been reading about "those traditions" He last attended an AA meeting about a month prior to the hearing, but had a sponsor and was currently working on the fifth step which, according to father, involved "understanding the spiritual aspects, understanding about alcohol and how that comes into play, [understanding] that [he] need[ed] to be more spiritual."

Father maintained that, when he was drinking, he did not drink in front of his children. But he understood that his drinking could affect them by interfering with his ability to spend time with them. Father also admitted that his drinking caused the domestic violence with mother and that he "used to drink a lot."

From his domestic violence program, father learned he needed to control his ego and that he should spend more time with his children and help his "wife out more at home because she needs help." When asked how he would respond if, after returning home, he argued with mother, father responded that he "would have to control [his] anger, and . . . would try to talk about

[the disagreement]. And if that [was] not possible, [he] would leave and [they] would talk once [they were] calm.”

On redirect examination by his counsel, father maintained that the court-ordered programs had improved his communication skills. For example, he learned to pay more attention to J.B. because, at 13 years old, he was vulnerable to gang influence. He also learned from his AA meetings that alcohol “was a big problem for [him] and . . . to accept that it was a problem for [him].” And, he understood that, due to his diabetes, continuing to drink could be dangerous to his health.

Following the arguments of counsel, during which the children’s attorney objected to allowing father to return to the home, the juvenile court found that continued jurisdiction and supervision by the Department was necessary, but ordered that father be permitted to return to the home on the condition that mother resume her attendance at Al-Anon meetings, father regularly attend AA meetings, and both parents participate in all services previously ordered. In making its orders, the court reasoned as follows: “And we are a long way I think from father being able to say that he has completely controlled this issue that he has with alcohol. [¶] I do think that the children are not in substantial risk in the parent’s care, but I do think father needs to make even more of an effort towards his sobriety. But I was impressed with his testimony. He is not the most expressive person, but that’s understandable. I think that if you read between the lines and you try to understand what he’s saying, I think he has learned a lot about what he’s dealing with. [¶] His honesty, I think, comes through. And judges aren’t supposed to go beyond the record, but I don’t think anyone would object to the fact that I quickly googled what step five was [to] see if father

was correct and he was—the fact that he would know a little something about that step that he’s currently on. And certainly, it’s going to benefit him more, and he’s going to get [a] lot more out of the 12-step program if he’s physically attending rather than just trying to [do] it on his own with a book.”

III. DISCUSSION

A. *Legal Principles and Standard of Review*

The children challenge the juvenile court’s order, made at the second six-month review hearing, allowing father to return to the family home under the continuing jurisdiction of the Department.

“Once a child has been declared a dependent, the juvenile court must review the status of the child every six months. (*Bridget A. [v. Superior Court]* (2007) 148 Cal.App.4th 285,) 303; see Cal. Rules of Court, rule 5.710(a)(1) [noting ‘[i]f the child is returned, the court may order the termination of dependency jurisdiction or order continued dependency services and set a review hearing within 6 months’].) [¶] ‘The applicable standards at the six-month review hearing differ depending on the child’s placement.’ (*In re Maya L.* (2014) 232 Cal.App.4th 81, 98) Section 364 provides the standard when ‘a child under the supervision of the juvenile court . . . is not removed from the physical custody of his or her parent or guardian.’ (§ 364, subd. (a); see *In re Pedro Z.* (2010) 190 Cal.App.4th 12, 20 . . . [noting ‘when the child remains in a parent’s home, the court reviews the status of the case every six months under section 364’].) [¶] Despite the ‘not removed’ language of section 364,

subdivision (a), this court, like most other California appellate courts, has concluded that section 364 also applies in cases . . . where a dependent minor is removed from the physical custody of a parent and/or guardian and later *returned* to that parent and/or guardian. [Citations.] [¶] At the section 364 review hearing, the juvenile court is not concerned with reunification, but in determining whether the dependency should be terminated or supervision is necessary. [Citations.] The juvenile court makes this determination based on the totality of the evidence before it, including reports of the social worker who is required to make a recommendation concerning the necessity of continued supervision. [Citations.]” (*In re N.O.* (2019) 31 Cal.App.5th 899, 922–923.)

The juvenile court has broad discretion to determine what would best serve and protect the child’s interest and to fashion a disposition order in accordance with that discretion. (*In re Gabriel L.* (2009) 172 Cal.App.4th 644, 650–651; *In re Jasmin C.* (2003) 106 Cal.App.4th 177, 180.) Therefore, we review the juvenile court’s disposition orders for an abuse of discretion. (*In re Gabriel L., supra*, 172 Cal.App.4th at p. 652.) But we review for substantial evidence the findings of fact on which dispositional orders are based. (*In re Francisco D.* (2014) 230 Cal.App.4th 73, 80.)

B. *Analysis*

The children contend that the juvenile court abused its discretion by allowing father to return to the family home before either he or mother completed their court-ordered services. According to the children, father “had not even scratched the

surface” of addressing and overcoming “his alcoholism.” Specifically, the children point to father’s admitted and continued drinking during the period of Department supervision; his prior DUI; his blackout during the violent incident; his cessation of participation in AA meetings and failure to complete all 12-steps of that program; mother’s observation that his drinking had increased in the months before the incident; and the children’s observations that father drank “a lot.” Based on that evidence, they argue that father’s issues with alcohol were unresolved at the time of the second six-month review hearing and therefore posed a substantial risk of future harm to the children. They also argue that mother’s own drinking, her failure to participate in her Al-Anon program, and her denial that there was a serious problem indicate that she was unable to protect the children from the risks that father’s alcohol issues posed to the children in the home.

The children cite *Los Angeles County Dept. of Children & Family Services v. Superior Court* (2006) 145 Cal.App.4th 692 in support of their argument that the juvenile court abused its discretion by failing to safeguard the dependent children. The court in that case concluded that a juvenile court had abused its discretion in allowing a father, who had sexually molested his child, to move back into the home with monitored visits, observing that “[a]t least when the threat to the dependent child is the likely recurrence of sexual abuse, the concept of monitored visitation is fundamentally incompatible with around-the-clock in-home contact.” (*Id.* at p. 699.) Although the court was “not prepared to say it could never be appropriate to permit an offending parent to live with his or her child on condition that all contact between the two remain monitored [citations], we have no

doubt under the circumstances of this case the juvenile court's order violates the court's obligation to safeguard the dependent child." (*Ibid.*)

This case did not involve findings of sexual or any other physical abuse against any of the children. And, although it did involve a violent assault of mother in the presence of the two oldest boys, during the period of supervision, father had successfully completed domestic violence and parenting courses, and was able to articulate what he had learned. He was also participating in and benefitting from individual counseling. And he had attended at least some AA meetings and was working on the AA 12-step program. Based on the services he had received at the time of the second review hearing, father recognized that he had serious issues with alcohol and that they had caused the violent incident with mother and had affected his children. The juvenile court found father credible and, although it recognized that father needed to make more effort "towards his sobriety" and was "a long way" from controlling his issues with alcohol, the court nevertheless concluded that the children would not be at "substantial risk" if father were to return to the home.

The record before the juvenile court also included the social worker's observation that father's year-long absence from the home had a substantial impact on the children's emotional well-being and that they missed father and enjoyed their visits with him. In addition, based on the family's progress in the court-ordered services, the social worker recommended not only that father be allowed to return home, but also that the court terminate jurisdiction over the children.

Although reasonable minds may disagree about whether, on these facts, father had made sufficient progress in his court-

ordered services to warrant return to the home, under the applicable standard of review, we defer to the juvenile court's decision to return him to the home, and conclude that its order was not beyond the bounds of reason.

IV. DISPOSITION

The disposition order is affirmed.

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KIM, J.

We concur:

BAKER, Acting P. J.

MOOR, J.